

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 190

Introduced by Senator Wright

February 7, 2013

An act to add Chapter 4.7 (commencing with Section 19750) to Division 8 of the Business and Professions Code, and to amend Sections 336.9 and 337a of the Penal Code, relating to gambling, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 190, as amended, Wright. Gambling: sports wagering.

(1) The California Constitution prohibits various gaming activities within the state, including casino-style gaming, but authorizes the Governor, subject to ratification by the Legislature, to negotiate and conclude compacts for the operation of slot machines and the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. The California Constitution also authorizes the Legislature to provide for the regulation of horse racing, charitable bingo games, the California State Lottery, and charitable raffles.

Existing law prohibits a person, whether or not for gain, hire, or reward, from making a betting pool or placing a bet or wager on the result of any contest or event, including a sporting event, as specified.

The Gambling Control Act provides for the licensure of certain individuals and establishments that conduct controlled games, as defined, and for the regulation of these gambling activities by the California Gambling Control Commission. Existing law provides for the enforcement of those regulations by the Department of Justice. Any

violation of these provisions is punishable as a misdemeanor, as specified.

The Horse Racing Law provides for the licensure of every person who participates in, or has anything to do with, the racing of horses, and every employee of a parimutuel department by the California Horse Racing Board. The board is responsible for adopting rules and regulations for the protection of the public, the control of horse racing, and parimutuel wagering, as well as enforcing all laws, rules, and regulations dealing with horse racing and parimutuel wagering. The law permits the board to authorize an association licensed to conduct a racing meeting to also operate a satellite wagering facility at its racetrack inclosure, and for fairs to locate a satellite wagering facility at their fairgrounds, under specified conditions. Any violation of these provisions is punishable as a misdemeanor.

This bill would authorize the owner or operator of a gambling establishment, or the owner or operator of a horse racing track, including a horse racing association, ~~or of a satellite wagering facility,~~ with a current license, to conduct wagering on professional and collegiate sports or athletic events, other than on collegiate sports or athletic events that take place in California or in which any California college team participates, by applying to the California Gambling Control Commission or the California Horse Racing Board, as specified, for authorization to conduct sports wagering, and by paying an annual fee for deposit in the Gambling Addiction Program Fund. The bill would require each licensed entity to remit to the ~~treasurer~~ *Treasurer* on a monthly basis for deposit in the ~~general fund~~ *General Fund*, an amount equal to 7.5% of its gross revenues *generated by sports wagering activities*. The bill would require the commission, the board, and the department to adopt regulations to implement these provisions, including authority to adopt regulations establishing fees in a reasonable amount to recover costs incurred performing their duties pursuant to these provisions.

The bill would require the department, among other things, to investigate any request made by the board or the commission in connection with an application for authorization, and to investigate suspected violations of the above provisions. The bill would authorize the board, commission, and department to regulate sports wagering to the same extent these entities currently regulate other legal gambling in this state, including the ability to audit the books and records of a licensed entity *related to the sports wagering activity*. The bill would

also prohibit a licensed entity from, among other things, accepting a wager from any person who is under 21 years of age or whose name appears on a self-exclusion list. Any violation of these provisions would be punishable as a crime. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing federal law, the Indian Gaming Regulatory Act of 1988, provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature. Existing law expressly ratifies a number of tribal-state gaming compacts, and amendments of tribal-state gaming compacts, between the State of California and specified Indian tribes.

This bill would authorize a federally recognized Indian tribe that is not a gambling establishment or a horse racing track, *or that has entered into a compact agreement with the state authorizing the operation of a satellite wagering facility*, to conduct sports wagering consistent with the requirements of the federal Indian Gaming Regulatory Act of 1988, and under terms no more stringent than those applicable to any other owner or operator in the state.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4.7 (commencing with Section 19750)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 4.7. SPORTS WAGERING

6
7 19750. The following entities may conduct wagering on sports
8 events as authorized pursuant to this chapter:

1 (a) The owner or operator of a gambling establishment with a
2 current license issued by the California Gambling Control
3 Commission pursuant to Chapter 5 (commencing with Section
4 19800).

5 (b) The owner or operator of a horse racing track, including a
6 horse racing association, ~~or of a satellite wagering facility~~, with a
7 current license issued by the California Horse Racing Board
8 pursuant to Chapter 4 (commencing with Section 19400). A
9 licensed horse racing track is authorized to conduct sports wagering
10 pursuant to this subdivision if it has an agreement in place with
11 the organization recognized by the board that is responsible for
12 negotiating purse agreements, satellite wagering agreements, and
13 all other business agreements on behalf of the horsemen and
14 horsewomen participating in a racing meeting.

15 (c) A federally recognized Indian tribe that is not authorized
16 pursuant to subdivision (a) or (b), *or that has entered into a*
17 *compact agreement with the state authorizing the operation of a*
18 *satellite wagering facility*, may conduct sports wagering as
19 authorized by the federal Indian Gaming Regulatory Act of 1988
20 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et
21 seq.), and under terms no more stringent than those applicable to
22 any other owner or operator of a gambling establishment in the
23 state.

24 19752. As used in this chapter, the following definitions apply:

25 (a) “Board” means the California Horse Racing Board.

26 (b) “Commission” means the California Gambling Control
27 Commission.

28 (c) “Department” means the Department of Justice.

29 (d) “Licensed operator” means any of the entities listed in
30 Section 19750 that ~~is~~ *are* authorized pursuant to this chapter to
31 conduct sports wagering.

32 (e) “Prohibited sports event” means any collegiate sport or
33 athletic event that takes place in California, or a sports event in
34 which any California college team participates, regardless of the
35 location at which the event takes place.

36 (f) “Sports event” shall include any professional sports or
37 athletic event, and any collegiate sports or athletic event, except
38 a prohibited sports event.

39 (g) “Sports wagering” means the business of accepting wagers
40 on a sports event by any legal system or method of wagering,

1 including, but not limited to, exchange wagering, parlays, over
2 and under, money line, and straight bets.

3 19754. (a) (1) An owner or operator of a gambling
4 establishment seeking to conduct sports wagering shall apply to
5 the commission for authorization to conduct sports wagering.

6 (2) An owner or operator of a horse racing track ~~or satellite~~
7 ~~wagering facility~~ seeking to conduct sports wagering shall apply
8 to the board for authorization to conduct sports wagering.

9 (b) The board or the commission, as the case may be, shall hear
10 and decide promptly, and in reasonable order, all applications to
11 conduct sports wagering from owners and operators of licensed
12 gambling establishments, *and* licensed horse racing tracks, ~~and~~
13 ~~satellite wagering facilities~~. Authorization to conduct sports
14 wagering shall not be unreasonably withheld for any applicant that
15 is in good standing and has a current license issued pursuant to
16 Chapter 4 (commencing with Section 19400) or Chapter 5
17 (commencing with Section 19800).

18 (c) An owner or operator of a gambling establishment ~~and an~~
19 ~~owner or operator of~~ *or* a horse racing track ~~or satellite wagering~~
20 ~~facility~~ that conducts sports wagering shall pay an annual fee of
21 three thousand dollars (\$3,000) to the State Department of Alcohol
22 and Drug Programs for deposit in the Gambling Addiction Program
23 Fund.

24 (d) Each licensed operator shall remit to the treasurer on a
25 monthly basis for deposit in the general fund an amount equal to
26 7.5 percent of its gross revenues *generated by sports wagering*
27 *activities*. Each monthly payment shall be due on the 10th day of
28 the following month. For the purposes of determining gross
29 revenues, the licensed operator and the treasurer shall use generally
30 accepted accounting principles.

31 19756. (a) Application for authorization to conduct sports
32 wagering shall be made on forms furnished by the board and the
33 commission.

34 (b) The application for authorization to conduct sports wagering
35 shall include all of the following:

36 (1) The name of the licensee.

37 (2) The name and location of the gambling establishment; *or*
38 horse racing track, ~~or satellite wagering facility~~.

39 (3) The names of all persons directly or indirectly interested in
40 the business and the nature of the interest.

1 (4) A description of the proposed sports wagering operation.

2 (5) Any other information and details the board or the
3 commission may require in order to discharge its duty properly.

4 19758. The board and the commission shall adopt regulations
5 for the administration of this chapter, and may adopt regulations
6 establishing fees in a reasonable amount necessary to recover costs
7 incurred by the board or the commission relating to the
8 administration of this chapter. The board and the commission shall
9 consult with each other in the adoption of regulations pursuant to
10 this section, and may adopt joint regulations.

11 19760. The regulations adopted by the board and the
12 commission shall do all of the following:

13 (a) Provide for the approval of wagering rules and equipment
14 by the department to ensure fairness to the public and compliance
15 with state law, including, but not limited to, all of the following:

16 (1) Acceptance of wagers on a series of sports events.

17 (2) Types of wagering tickets that may be used.

18 (3) The method of issuing tickets.

19 (b) Govern all of the following:

20 (1) The extension of credit.

21 (2) The cashing, deposit, and redemption of checks or other
22 negotiable instruments.

23 (3) The amount of cash reserves to be maintained by licensed
24 operators to cover winning wagers.

25 (4) The provision of reliable records, accounts, and reports of
26 transactions, operations, and events, the method of accounting to
27 be used by licensed operators, and the types of records required
28 to be maintained.

29 19762. The sports wagering authorized pursuant to this chapter
30 may be conducted only at the gambling establishment, *or* horse
31 racing track, ~~or satellite wagering facility~~ of the licensed operator,
32 or on Indian lands consistent with the federal Indian Gaming
33 Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and
34 25 U.S.C. Sec. 2701 et seq.).

35 19764. A licensed operator shall not do any of the following:

36 (a) Accept a wager on a sports event from any person who is
37 not physically present at the facility where the sports wagering is
38 conducted.

39 (b) Accept a wager from a person using any form of credit to
40 place the wager.

1 (c) Accept a wager from a person who is under 21 years of age.

2 (d) Admit into the sports wagering facility, or accept wagers
3 from, any person whose name appears on any self-exclusion list.

4 19766. A licensed operator shall establish the odds it will pay
5 on wagers placed on sports events.

6 19768. (a) A licensed operator shall not conduct any sports
7 wagering in violation of any provision of this chapter, any
8 regulation adopted pursuant to this chapter, or any governing local
9 ordinance.

10 (b) Any person who willfully violates any provision of this
11 chapter is guilty of a misdemeanor.

12 19770. (a) The department shall have all of the following
13 responsibilities:

14 (1) To investigate any request made by the board or the
15 commission in connection with an application for authorization
16 pursuant to this chapter. The department may recommend the
17 denial or the limitation, conditioning, or restriction of any
18 authorization.

19 (2) To monitor the conduct of all licensed operators and other
20 persons having a material involvement, directly or indirectly, with
21 a sports wagering operation.

22 (3) To investigate suspected violations of this chapter.

23 (4) To investigate complaints that are lodged against licensed
24 operators, or other persons associated with a sports wagering
25 operation, by members of the public.

26 (5) To initiate, when appropriate, disciplinary actions. In
27 connection with any disciplinary action, the department may seek
28 restriction, limitation, suspension, or revocation of any license,
29 permit, authorization, or approval pursuant to this chapter, Chapter
30 4 (commencing with Section 19400), or Chapter 5 (commencing
31 with Section 19800), or the imposition of any fine upon any person
32 licensed, permitted, authorized, or approved pursuant to those
33 chapters.

34 (6) To adopt regulations reasonably related to its functions and
35 duties as specified in this chapter.

36 (7) To adopt regulations establishing fees in the reasonable
37 amount necessary to recover costs incurred by the department
38 relating to the enforcement of this chapter.

(b) The department has all powers necessary and proper to enable it to carry out fully and effectually its duties and responsibilities specified in this chapter.

19772. (a) The department shall make appropriate investigations as follows:

(1) To determine whether there has been any violation of this chapter or any regulations adopted under this chapter.

(2) To determine any facts, conditions, practices, or matters that it may deem necessary or proper to aid in the enforcement of this chapter or any regulation adopted under this chapter.

(3) To aid in adopting regulations.

(b) If, after any investigation, the department is satisfied that a license, permit, authorization, or approval pursuant to this chapter, Chapter 4 (commencing with Section 19400), or Chapter 5 (commencing with Section 19800) should be suspended or revoked, it shall file an accusation in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) In addition to any action that the board or commission may take against a license, permit, finding of suitability, or approval, the board or commission may also require the payment of fines or penalties. However, any fine imposed shall not exceed twenty thousand dollars (\$20,000) for each separate violation of any provision of this chapter or any regulation adopted under this chapter.

19773. The board, commission, and department shall have the authority to regulate sports wagering to the same extent that these entities regulate other legal gambling in this state, including the ability to audit the books and records of a licensed operator *related to the sports wagering activity*.

SEC. 2. Section 336.9 of the Penal Code is amended to read:

336.9. (a) Notwithstanding Section 337a, and except as provided in subdivision (b), any person who, not for gain, hire, or reward other than that at stake under conditions available to every participant, knowingly participates in any of the ways specified in paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section 337a in any bet, bets, wager, wagers, or betting pool or pools made between the person and any other person or group of persons who are not acting for gain, hire, or reward, other than that at stake under conditions available to every participant, upon the result of

1 any lawful trial, or purported trial, or contest, or purported contest,
2 of skill, speed, or power of endurance of person or animal, or
3 between persons, animals, or mechanical apparatus, is guilty of
4 an infraction, punishable by a fine not to exceed two hundred fifty
5 dollars (\$250).

6 (b) Subdivision (a) does not apply to any of the following
7 situations:

8 (1) Any bet, bets, wager, wagers, or betting pool or pools made
9 via the Internet.

10 (2) Betting pools with more than two thousand five hundred
11 dollars (\$2,500) at stake.

12 (3) Any sports wagering authorized pursuant to Chapter 4.7
13 (commencing with Section 19750) of Division 8 of the Business
14 and Professions Code.

15 SEC. 3. Section 337a of the Penal Code is amended to read:

16 337a. (a) Except as provided in Section 336.9, and as
17 authorized pursuant to Chapter 4.7 (commencing with Section
18 19750) of Division 8 of the Business and Professions Code, every
19 person who engages in one of the following offenses shall be
20 punished for a first offense by imprisonment in a county jail for a
21 period of not more than one year or in the state prison, or by a fine
22 not to exceed five thousand dollars (\$5,000), or by both
23 imprisonment and fine:

24 (1) Pool selling or bookmaking, with or without writing, at any
25 time or place.

26 (2) Whether for gain, hire, reward, or gratuitously, or otherwise,
27 keeps or occupies, for any period of time whatsoever, any room,
28 shed, tenement, tent, booth, building, float, vessel, place, stand,
29 or enclosure, of any kind, or any part thereof, with a book or books,
30 paper or papers, apparatus, device, or paraphernalia, for the purpose
31 of recording or registering any bet or bets, any purported bet or
32 bets, wager or wagers, any purported wager or wagers, selling
33 pools, or purported pools, upon the result, or purported result, of
34 any trial, purported trial, contest, or purported contest, of skill,
35 speed, or power of endurance of person or animal, or between
36 persons, animals, or mechanical apparatus, or upon the result, or
37 purported result, of any lot, chance, casualty, or unknown or
38 contingent event whatsoever.

39 (3) Whether for gain, hire, reward, or gratuitously, or otherwise,
40 receives, holds, or forwards, or purports or pretends to receive,

1 hold, or forward, in any manner whatsoever, any money, thing, or
2 consideration of value, or the equivalent or memorandum thereof,
3 staked, pledged, bet, or wagered, or to be staked, pledged, bet, or
4 wagered, or offered for the purpose of being staked, pledged, bet,
5 or wagered, upon the result, or purported result, of any trial, or
6 purported trial, or contest, or purported contest, of skill, speed, or
7 power of endurance of person or animal, or between persons,
8 animals, or mechanical apparatus, or upon the result, or purported
9 result, of any lot, chance, casualty, or unknown or contingent event
10 whatsoever.

11 (4) Whether for gain, hire, reward, or gratuitously, or otherwise,
12 at any time or place, records, or registers any bet or bets, wager
13 or wagers, upon the result, or purported result, of any trial, or
14 purported trial, or contest, or purported contest, of skill, speed, or
15 power of endurance of person or animal, or between persons,
16 animals, or mechanical apparatus, or upon the result, or purported
17 result, of any lot, chance, casualty, or unknown or contingent event
18 whatsoever.

19 (5) Being the owner, lessee, or occupant of any room, shed,
20 tenement, tent, booth, building, float, vessel, place, stand,
21 enclosure, or grounds, or any part thereof, whether for gain, hire,
22 reward, or gratuitously, or otherwise, permits that space to be used
23 or occupied for any purpose, or in any manner prohibited by
24 paragraph (1), (2), (3), or (4).

25 (6) Lays, makes, offers, or accepts any bet or bets, or wager or
26 wagers, upon the result, or purported result, of any trial, or
27 purported trial, or contest, or purported contest, of skill, speed, or
28 power of endurance of person or animal, or between persons,
29 animals, or mechanical apparatus.

30 (b) In any accusatory pleading charging a violation of this
31 section, if the defendant has been once previously convicted of a
32 violation of any subdivision of this section, the previous conviction
33 shall be charged in the accusatory pleading, and, if the previous
34 conviction is found to be true by the jury, upon a jury trial, or by
35 the court, upon a court trial, or is admitted by the defendant, the
36 defendant shall, if he or she is not imprisoned in the state prison,
37 be imprisoned in a county jail for a period of not more than one
38 year and pay a fine of not less than one thousand dollars (\$1,000)
39 and not to exceed ten thousand dollars (\$10,000). Nothing in this
40 paragraph shall prohibit a court from placing a person subject to

1 this subdivision on probation. However, that person shall be
2 required to pay a fine of not less than one thousand dollars (\$1,000)
3 nor more than ten thousand dollars (\$10,000) or be imprisoned in
4 a county jail for a period of not more than one year, as a condition
5 thereof. In no event does the court have the power to absolve a
6 person convicted pursuant to this subdivision from either being
7 imprisoned or from paying a fine of not less than one thousand
8 dollars (\$1,000) and not more than ten thousand dollars (\$10,000).

9 (c) In any accusatory pleading charging a violation of this
10 section, if the defendant has been previously convicted two or
11 more times of a violation of any subdivision of this section, each
12 previous conviction shall be charged in the accusatory pleadings.
13 If two or more of the previous convictions are found to be true by
14 the jury, upon a jury trial, or by the court, upon a court trial, or are
15 admitted by the defendant, the defendant shall, if he or she is not
16 imprisoned in ~~a~~ *the* state prison, be imprisoned in a county jail for
17 a period of not more than one year or pay a fine of not less than
18 one thousand dollars (\$1,000) nor more than fifteen thousand
19 dollars (\$15,000), or be punished by both imprisonment and fine.
20 Nothing in this paragraph shall prohibit a court from placing a
21 person subject to this subdivision on probation. However, that
22 person shall be required to pay a fine of not less than one thousand
23 dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000),
24 or be imprisoned in a county jail for a period of not more than one
25 year as a condition thereof. In no event does the court have the
26 power to absolve a person convicted and subject to this subdivision
27 from either being imprisoned or from paying a fine of not more
28 than fifteen thousand dollars (\$15,000).

29 (d) Except where the existence of a previous conviction of any
30 subdivision of this section was not admitted or not found to be true
31 pursuant to this section, or the court finds that a prior conviction
32 was invalid, the court shall not strike or dismiss any prior
33 convictions alleged in the information or indictment.

34 (e) This section applies not only to persons who commit any of
35 the acts designated in paragraphs (1) to (6), inclusive, of
36 subdivision (a), as a business or occupation, but also applies to
37 every person who in a single instance engages in any one of the
38 acts specified in paragraphs (1) to (6), inclusive, of subdivision
39 (a).

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

10 SEC. 5. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 In order to protect the liberty interests of Californians, to ensure
15 that the state realizes significant revenues from this popular,
16 pervasive, and legitimate activity, and to ensure that suitable and
17 qualified persons operate sports betting venues, it is necessary that
18 this act take effect immediately.